Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-322

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY,
A DELAWARE CORPORATION,
Petitioner,

vs.

THE DEPARTMENT OF TRANSPORTATION OF THE STATE OF ILLINOIS, FOR AND IN BEHALF OF THE PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

BRIEF OF RESPONDENT.

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BRIEF OF RESPONDENT.

STATEMENT OF THE CASE.

The respondent agrees with the major portion of petitioner's Statement of the Case. Several matters contained in it do require clarification.

The portion of the highway project involved is the road-bed approach to a newly constructed bridge for Federal Aid Interstate Route No. 474. In close proximity is the Illinois River, adjacent to which the petitioner owns 610 acres (R. C353). The subject property consists of 42.6 acres lying at the bottom of the Illinois River, between its thread and 50 feet out from its river bank. Petitioner's river frontage or access to the river is not involved, since the taking commenced 50 feet off shore. In

fact, subsequent to the "quick-take", the petitioner dismissed its Cross Petition which had alleged damages to the remaining acreage.

In order to build the raised bridge approach, fill material totalling over one million cubic yards was piped from petitioner's submerged land to the highway project. At the "quick-take" hearing, the petitioner's assistant to the President testified to the value of the submerged acreage being worth $150,000.00 (C353). The respondent's valuation witness testified to the fair cash market value of the submerged land as being $1,000.00 (C378).

ARGUMENT.

Both parties are in agreement as to the Constitutional mandate of the Just Compensation Clause. At issue is the permissible method in determining the fair cash market value of what constitutes just compensation.

Contrary to the petitioner's ascertion at page 8 of its Petition, the State took a fee interest in the 42.6 acres of submerged land. It is certainly not conceded, as the petitioner asserts, that the taking was not contemplated by the scope of the original project. Involved is a single project, a single bridge, a single abutment cone and a single dike road. Without each of these component parts, there would be no interstate highway at this particular location. There were no enlargements of the project as described in *United States* v. *Miller,* 317 U. S. 369 (1942). It is undisputed that the nature of the taking was changed from the taking of an easement to the taking of a fee interest. The purpose remained the same, namely, for the construction of a segment of public highway, Interstate 474.

But for the highway construction project, there was neither a demand nor a market for the petitioner's river bottom fill. The *single sale* made by the petitioner during its ownership of the total property, which the petitioner started purchasing as far back as 1929 (R. C359), was made to a State contractor shortly prior

to the filing of the instant condemnation action. The fill material sold was used for the same bridge approach or cone (R. C232, C512). The subject property was used in connection with the dike road (R. C532), i.e. the extension of the cone. The cases appear to be quite consistent in holding that any special value to the condemnor must be excluded in arriving at a valuation. *United States* v. *Miller,* 317 U. S. 369 (1942); *United States* v. *Cors,* 337 U. S. 325 (1949); *United States* v. *Fuller,* 409 U. S. 488 (1973). As stated in *Cors,* at page 333:

> "It is not fair that the government be required to pay the enhanced price which its demand alone has created."

The Illinois Supreme Court's opinion recognized that compensation must be estimated for the "land as land" including the consideration of any minerals situated within the land. This approach was followed, rather than the simple, but speculative, method of "unit-times-price" method espoused by the petitioner. While this Court has not apparently ruled directly on the "unit-times-price" valuation method, the majority of the lower courts have rejected such a method of valuation. See 40 ALD Fed. 656.

CONCLUSION.

It is respectfully suggested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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